

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)		
PLAINTIFFS Noreen Wiscovitch, Chapter 7 Trustee on Behalf of the Bankruptcy Estate of Fiddler, Gonzalez & Rodriguez, PSC	DEFENDANTS MICROSOFT CORPORATION			
ATTORNEYS (Firm Name, Address, and Telephone No.) JAVIER VILARINO VILARINO & ASSOCIATES LLC, PO BOX 9022515, SAN JUAN, PR 00902 TEL. 787-565-9894	ATTORNEYS (If Known)			
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input checked="" type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee			
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Re: Turnover of Property of the Estate, Willful Violation of the Automatic Stay, Pursuant to 11 U.S.C. §§ 105(a), 362(a)(3), 541(a)(1), 542(a); FRBP 7001(1), and 7001(7).				
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(1) – Recovery of Money/Property <input checked="" type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div> </td> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input checked="" type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) </td> </tr> </table>			FRBP 7001(1) – Recovery of Money/Property <input checked="" type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div>	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input checked="" type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
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<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23			
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ 0			
Other Relief Sought Turnover of property of the estate.				

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR FIDDLER, GONZALEZ & RODRIGUEZ, PSC		BANKRUPTCY CASE NO. 17-03403(MCF)
DISTRICT IN WHICH CASE IS PENDING SAN JUAN	DIVISION OFFICE	NAME OF JUDGE HON. MILDRED CABAN
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /S/ JAVIER VILARINO		
DATE JANUARY 23, 2019	PRINT NAME OF ATTORNEY (OR PLAINTIFF) JAVIER VILARINO	

INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF PUERTO RICO**

In Re:

FIDDLER GONZALEZ & RODRIGUEZ, P.S.C.

Debtor

**NOREEN WISCOVITCH, CHAPTER 7
TRUSTEE ON BEHALF OF THE
BANKRUPTCY ESTATE OF FIDDLER,
GONZALEZ & RODRIGUEZ, P.S.C.**

Plaintiff

Vs.

MICROSOFT CORPORATION

Defendant

Bankruptcy No.: 17-03403 (MCF)

Chapter 7

Adv. Proc. No.: _____

Re: Turnover of Property of the Estate,
Willful Violation of the Automatic Stay,
Pursuant to 11 U.S.C. §§ 105(a),
362(a)(3), 541(a)(1), 542(a); FRBP
7001(1), and 7001(7).

COMPLAINT

TO THE HONORABLE MILDRED CABÁN FLORES,
UNITED STATES CHIEF BANKRUPTCY JUDGE:

COMES NOW, by counsel, the duly appointed and acting Chapter 7 trustee of the bankruptcy estate of Fiddler, González & Rodríguez, P.S.C., (“Debtor”), Noreen Wiscovitch-Rentas (the “Trustee” or “Plaintiff”), who respectfully alleges, states, and prays as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157, and the General Order of referral to Title 11 proceedings to the United States Bankruptcy Court for the District of Puerto Rico dated July 19, 1984 (Torruella, C.J.).

2. This adversary proceeding is brought pursuant to FRBP 7001(1), and 7001(7) of Title 11, United States Code (the “Bankruptcy Code”).

3. This venue is appropriate in this court under 28 U.S.C. §§ 1409(a).

4. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(E).

5. The Trustee is filing the instant complaint in order to preserve the estate's rights under the listed causes of action and reserves the right to dismiss these after further investigation and/or discovery.

6. The amounts claimed as part of the following causes of action may overlap. They can be considered individually, or they can be taken as a whole for the total amount listed in the final cause of action.

THE PARTIES

7. The Plaintiff, the bankruptcy estate of the Debtor, is represented by Noreen Wiscovitch-Rentas, who is appointed as Chapter 7 Trustee.

8. The Defendant, Microsoft Corporation ("Microsoft"), is a service provider for the information systems of the Debtor. The Defendant was also listed in the bankruptcy schedules as a Creditor of the Debtor.

BACKGROUND

9. On May 16, 2015, the Debtor filed a voluntary petition under the provisions of Chapter 7 of the Bankruptcy Code (the "Petition Date") in which the Debtor included Microsoft Corporation (the "Defendant" or "Microsoft") as a creditor. [Bankruptcy Case No. 17-03403; Dkt. 1, p. 64]

10. On even date, the appearing Trustee was duly appointed in the captioned case by the Court. [Bankruptcy Case No. 17-03403; Dkt. 5]

11. On May 18, 2017, the Court entered a certificate of service indicating that a notice of the main bankruptcy case was served upon the Defendant at: Microsoft Corporation, Latin America Collections, Bank of America, Lockbox 848441, Dallas TX 75284-8441. [Bankruptcy Case No. 17-03403; Dkt. 7, Notification # 4468839]

12. On November 21, 2017, the bankruptcy estate's Technology consultant Marcel Morales (the "Technology Consultant") opened job number SRX1405737833ID with the Defendant to obtain the passwords in order to gain access to the Debtor's e-mail system. On November 24, 2018, the Defendant contacted the Technology Consultant to request additional information to process the request. [See Exhibit 1]

13. On February 26, 2018, the Technology Consultant received a communication by a Microsoft representative informing him that the service request had been cancelled. The representative refused to provide the Technology Consultant with the requested information. Instead, Microsoft referred him thereafter to the Defendant's legal department without providing a vehicle to channel the request. At this point Microsoft was already on notice of a bankruptcy procedure and was exercising undue control over property of the estate. [See Exhibit 2]

14. On March 8, 2018, the Trustee served the Defendant a legal hold notice (the "Legal Hold Notice") requesting the immediate attention and assistance from the Defendant. The request included the preservation of all records and all electronic communication and documents of the Debtor, which belong to the estate. Therefore, despite the robust evidence currently in possession of the Plaintiff, the passwords, being property of the estate, are relevant to the case and the forthcoming litigation of several causes of action against third parties for counts including, but not limited to, breach of contract, breach of fiduciary duty, and several counts of fraud. The document was served on Microsoft's legal division at One Microsoft Way, Redmond, WA 98052-6399 [See Exhibit 3]

15. On June 19, 2018, the Trustee served upon the Defendant a subpoena requesting any engagement letters, passwords, activity ledgers for all the Office 365 licenses and the names of the persons managing the licenses associated with the Debtor among others, which are property

of the estate under the provisions of the Bankruptcy Code. However, Microsoft ignored the contents of the subpoena.

16. On November 6, 2018, the subpoena was sent to the Defendant's local office through an e-mail which clearly delineated the Trustee's attempts to acquire the passwords. [*See* Exhibit 4]

17. On November 19, 2018, Plaintiff requested again to the Defendant that a hold be placed on the Debtor's accounts and made itself available to provide information to help produce the passwords related to the Debtor's information systems. Also, there were telephone conferences held between the parties regarding such matters. [*See* Exhibit 5]

18. On that date, the Defendant sent boiler plate objections to Plaintiff's subpoena stating that the data requested is owned and controlled by the "customer". The Defendant also remarked that the letter and materials sent by the Trustee lacked identification of an account against which any action could be taken. [*See* Exhibit 6] No production of the passwords was effected.

19. On January 18, 2019, the Plaintiff sent a last resort e-mail to the Defendant's legal representatives to procure the administrative passwords owned by the bankruptcy estate. The Defendant was put on notice that if the passwords were not produced, the Plaintiff would promptly move the Court for injunctive relief. [*See* Exhibit 7]

20. As of today's date; after communications with the estate's Technology consultant, a Legal Hold Notice, subpoenas, e-mails, and telephone conferences requesting the passwords to gain access, the Defendant refuses to produce them. Also, the Defendant has not yet produced any of the documentation or information required by the Plaintiff in clear violation of the subpoena and the Rules. As such, the Defendant continues to violate the Automatic Stay. Turnover of the property is warranted.

TURNOVER OF PROPERTY, AND WILLFUL VIOLATION OF THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. §§ 105(a), 541(a)(1), 542(a) AND FRBP 7001(1)

Applicable Law and Discussion

21. The Bankruptcy Code defines “property of the estate” as comprising “**all legal or equitable interests of the debtor in property as of the commencement of the case.**” *See* 11 U.S.C. § 541(a)(1) [emphasis ours]

22. The business relationship between the Debtor and the Defendant engendered items which are considered part of the bankruptcy estate. Among these is the Office 365 account which the Debtor held in Defendant’s cloud system. Defendant is listed as a creditor of the Debtor in the schedules for services related to the Debtor’s information systems.

23. Also, the information about the passwords for access to the e-mail system and/or Office 365 licenses, the contents of virtual servers, their online ports and information about any partner (or any other partner to provide services) used by the Defendant are property of the estate since the Debtor had legal or equitable interests in them pursuant to 11 U.S.C. § 541(a)(1).

24. On the other hand, Section 542 of the Bankruptcy Code has provisions regarding the turnover of property by the Trustee of the bankruptcy estate which ultimately will benefit the distributions to unsecured creditors stating that “...an entity,...shall deliver to the trustee and account for, such property or the value of such property, unless such property is of inconsequential value to the estate.” *See* 11 U.S.C. § 542(a) Therefore, the Defendant has the duty to deliver and turnover Plaintiff the passwords for the Debtor’s Office 365 account as it has been continuously requested by the estate’s professionals.

25. Furthermore, Section 362 of the Bankruptcy Code subjects to the Automatic Stay any act to “obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate”. *See* 11 U.S.C. § 362(a)(3). In the captioned case the Defendant

willfully and continuously holds property of the estate and denies the surrender of the passwords for the Debtor's Office 365 account to the estate's professionals. Also, the Defendant ignores the Legal Hold Notice and the subpoenas served by the Plaintiff arguing that the customer is the legal holder of the property, which in this case is the Plaintiff. The Defendant has full knowledge of these facts. By doing this, the Defendant willfully exercises undue control over property of the estate in violation of the Automatic Stay and as such, should be ordered to turn over the property (passwords) and grant access to the Office 365 account to the Trustee. [See Exhibits 3 & 6]

26. The Defendant is aware of the captioned bankruptcy proceeding since the filing of the proceedings by receiving notices from the Court itself, due to its status as a listed creditor of the estate. [Bankruptcy Case No. 17-03403; Dkt. 7, Notification # 4468839]. Also, the Technology Consultant and other consultants have channelled the controversy under all available means, with no results. Microsoft exercises undue control over property of the estate. [See Exhibit 2]

27. The Defendant's objection to the Plaintiff's requests for passwords for the Debtor's Office 365 account and other related information rests on the basis that the data is owned and controlled by the customer. However, the Defendant and their legal department have been advised of the Plaintiff's appointment and the orders authorizing the professionals to work on behalf of the estate. The fact that the Plaintiff and its professionals are in the shoes of the customer is easily verifiable and the evidence has been sent to Defendant since the inception of the case. The Defendant has willfully violated the Automatic Stay and should be summarily ordered to turn over the passwords and grant access to the Office 365 account to the Trustee, and to comply with the production of information requested by the Plaintiff to prevent any damage to the bankruptcy estate.

WHEREFORE, the Trustee respectfully requests from this Court to enter an order: compelling the Defendant to turn over the passwords and grant access to the Office 365 account of the Debtor and other information requested by the Plaintiff, to prevent damage to the bankruptcy estate.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 23rd day of January 2019.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON THIS SAME DATE, I ELECTRONICALLY FILED THE FOREGOING WITH THE CLERK OF THE COURT USING THE CM/ECF SYSTEM WHICH WILL SEND NOTIFICATION OF SUCH FILING TO ALL REGISTERED CM/ECF PARTICIPANTS.

/s/ Noreen Wiscovitch-Rentas

NOREEN WISCOVITCH-RENTAS

Appointed Chapter 7 Trustee

/s/ Javier Vilariño

JAVIER VILARIÑO

USDC NUM. 223503

VILARIÑO & ASSOCIATES LLC

PO BOX 9022515

San Juan, PR 00902-2515

Tel. 787-565-9894

E-mail: jvilarino@vilarinolaw.com

rnegron@vilarinolaw.com

From: Marcel Morales <marcel@moratekpr.com>
Sent: Wednesday, December 26, 2018 11:47 AM
To: rnegron@vilarinolaw.com
Cc: Jeselle Marrero; Jeselle Marrero
Subject: Fwd: SRX1405737833ID - CONSULTA MICROSOFT

FYI

Marcel Morales

Technology Consultant
Mor@tek Solutions & Consulting Services LLC
787-504-5147

Begin forwarded message:

From: Marcel Morales <marcel@moratekpr.com>
Date: November 24, 2017 at 3:59:52 PM AST
To: Noreen Wiscovitch-Rentas <noreen@nwr-law.com>, Javier Vilarino <jvilarino@vilarinolaw.com>
Subject: FW: SRX1405737833ID - CONSULTA MICROSOFT

Marcel Morales
MCTS, MCSA, MCITP, MCT, CMITC, Network+, A+, Security+, CCSS, CNDP, CCFI & NEITP
Technology Consultant
787-504-5147
Webmeeting click-to-call <https://berg.3cx.net/join/marcel>



From: Microsoft Customer Support
[mailto:CNTUS.COMR.LA.00.ES.TPR.BOG.CS.T01.CUS.00.EO@css.one.microsoft.com]
Sent: Friday, November 24, 2017 2:51 PM
To: marcel@moratekpr.com
Subject: SRX1405737833ID - CONSULTA MICROSOFT

Apreciado,

MARCEL MORALES,

Gracias por contactarse con el servicio al cliente y soporte de Microsoft.

Continuando con su consulta me permito informarle que para continuar asistiéndole es necesario que proporcione los datos solicitados a continuación:

- Nombre de la empresa que realiza la investigación, nombre de la persona encargada de la investigación, teléfonos de contacto.

- Nombre del dominio a recuperar acceso como administrador.

- Documento .pdf con datos correspondientes a la investigación, organismo encargado, agente encargado de la investigación.

Puede comunicarse de nuevo con nosotros ubicando el número de teléfono en el siguiente enlace:

<https://support.microsoft.com/en-us/help/13948/global-customer-service-phone-numbers>

Estamos pendiente de su comunicación

Atentamente,

Luis Javier Fajardo Chapeta

Centro de Atención al Cliente



Atendemos sus preguntas generales también en [Facebook](#) y [Twitter](#)

Case:19-00008-MGF Doc#:1 Filed:01/23/19 Entered:01/23/19 16:16:56 Desc: Main Document Page 12 of 32

From: Microsoft Customer Support [mailto:MicrosoftLegal737013@cs.sfta.microsoft.com]
Sent: Monday, February 26, 2018 6:58 PM
To: marcel@moratekpr.com
Subject: SRX1416996994ID - LATAM | PR | Admin access issues <No Reply Necessary>

Hello Marcel,

This is a follow-up to our phone conversation. Per our discussion we will be closing this Service Request with the status of: cancelled, as you will need to contact the legal department in order to gain access.

This is the contact information for legal department:

(<https://www.microsoft.com/en-us/WorldWide.aspx>)

United States

Mail information to:

Microsoft Corporation

ATTENTION: Microsoft Legal (CELA)

One Microsoft Way

Redmond, WA 98052-6399

Fax Information to: Microsoft Corporation

ATTENTION: Microsoft Legal (CELA)

(425) 936-7329

City View Plaza I Suite 107
#48 State Road 165 Km 1.2
Guaynabo PR 00968
Puerto Rico

Teléfono: (787) 273-3600
Fax: (787)273-3634

The Office 365 Data Protection team strives to deliver an exceptional customer support experience and welcomes your feedback!

After this case is archived, you may receive a survey to grade your interactions with me as well as your overall support experience. **Please note that questions 1 - 3 are specific to the support I provided.** Comments about your overall experience can be provided in the text box.

This case will be available within the Microsoft Online Admin Portal for future reference.

<No Reply Necessary>

Warm Regards,

Isaac Blanco Garcia

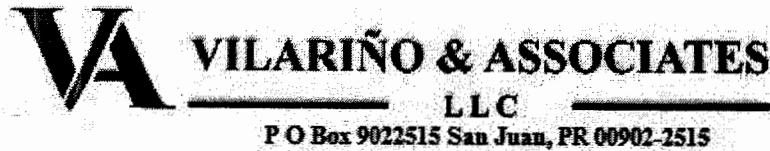
Support Engineer | Microsoft Office 365 Data Protection

Main line : 866-807-5850

Direct Line : +1 855-425-2648 x 60234

Working hours : Sunday to Thursday from 9pm to 4am Pacific Time Zone





Javier Vilariño, Esq.
Tel. (787) 565-9894

Website: www.vilarinolaw.com
E-mail: jvilarino@vilarinolaw.com

IMPORTANT LEGAL HOLD NOTICE

March 8, 2018

BY MAIL:

Microsoft Corporation
Attn. Microsoft Legal (CELA)
One Microsoft Way
Redmond, WA 98052-6399

RE: FIDDLER, GONZÁLEZ & RODRÍGUEZ, P.S.C., BANKRUPTCY CASE NUM. 17-03403
(MCF)

Dear legal representatives of Microsoft Corporation:

The Law Firm Fiddler, González & Rodríguez, P.S.C. (the “Debtor”) filed a Voluntary Petition under the provisions of Chapter 7 of the Bankruptcy Code on May 16, 2017 (the “Petition Date”) in the U.S. Bankruptcy Court for the District of Puerto Rico (the “Court”). Thereafter, pursuant to 11 U.S.C. §701, the United States Trustee appointed Mrs. Noreen Wiscovitch-Rentas, Esq. as the Chapter 7 Trustee (the “Trustee”) of the Debtor’s bankruptcy estate for its orderly liquidation (See Attachment 1). Our legal firm has been retained by the Trustee and approved by the Bankruptcy Court to assist and provide legal counsel to the Trustee. (See Attachment 2) To that effect, Microsoft Corporation (“Microsoft”) has been identified as an entity who was involved with Debtor’s electronic network communications systems and was also listed as a Creditor in the case of reference.

The present communication is to request immediate attention and assistance from Microsoft in preserving all records and any and all electronic communications and documents of the Debtor, which may be relevant to the case of reference, and specifically to the forthcoming litigation of several causes of action against certain third parties for counts including, but not limited to, breach of contract, breach of fiduciary duty, and several counts of fraud.

To comply with the Trustee’s legal obligations, we must make all reasonable effects and efforts to preserve, recover or suspend from deletion, overwriting, modification, or other destruction of any and all relevant documents, papers, communications or any electronic data in your possession, custody, or control that is relevant to these litigation matters.

As used in this Notice, the terms “communications”, “data”, “document”, “information”, “papers” are used in the broadest sense and apply not only to paper documents but also electronic documents

or communications. In short, all documents and information, in whatever form, that is relevant to these matters must be retained and preserved. At this juncture, the Trustee has retained certain professionals for a forensic reconstruction of Debtor's business operations and affairs, including the services of Mr. Marcel Morales and his Firm Moratek Solutions and Consulting Services, LLC as Technology Consultant of the estate (the "Technology Consultant").

The Technology Consultant has attempted to access the Debtor's Outlook network through Office 365, a crucial element in the reconstruction of Debtor's business affairs. On February 26, 2018, the Technology Consultant received a communication by a Microsoft representative directing him that the service request numbered SRX1405737833ID; opened to gain access to Debtor's network had been cancelled "as you will need to contact the legal department in order to gain access".

Regarding the scope of the preservation, all communications, data, documents, information and papers that have taken place since the Petition Date, and the four (4) years prior to the Petition Date, which is on or about May 16, 2013 must be retained. If Microsoft is unsure about whether certain paper or electronic documents are relevant, it should preserve them. Microsoft must continue to preserve all paper and electronic documents or communications until it has received written notice that the litigation hold has been released.

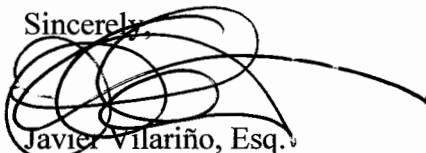
Preservation is mandatory. Electronically stored information is an important and potentially irreplaceable source of discovery in this matter. Failure to retain these documents or communications, whether intentionally or accidentally or to ignore this Notice may result in the Trustee's inability to prosecute its claims or defend herself in this matter. Failure to do so could also result in financial and legal hardship against the Trustee that could negatively affect the outcome of this legal matter and all parties-in-interest. Thus, Microsoft must take every reasonable step to preserve this information until further written notice.

The Trustee considers these litigation matters to be confidential and, unless otherwise permitted, you should not discuss, publish or disclose any information relating these matters without permission from our offices. If you are aware of any individuals or service providers that should have been listed on this notice that you believe may have additional and relevant information, such as those who may be under your supervision, direction, or control, please notify our offices. Additionally, if you know of any other former employees who may have relevant materials, please forward the names to our offices.

Should Microsoft have any questions about this notice or its responsibilities to comply with this notice, please contact our offices at the above-listed number. We may also be following up with you directly regarding the preservation or collection of your data in response to this litigation hold notice.

Please reply to acknowledge that you have read and understood the preservation obligation stated in this litigation hold notice. Microsoft's attention and assistance with this Notice is greatly appreciated. If you have any doubts or comments regarding the foregoing, please contact our offices as soon as practically possible.

Sincerely,



Javier Vilariño, Esq.

Employment Of Professional Page 1 of 1
IN THE UNITED STATES BANKRUPTCY COURT
District of Puerto Rico

IN RE:

FIDDLER GONZALEZ & RODRIGUEZ PSC

66-0243707

Debtor(s)

Case No. **17-03403 MCF**

Chapter 7

FILED & ENTERED ON 7/11/17

ORDER

The court having considered the application of the Chapter 7 trustee to employ Javier Vilarino and declaration in support thereof, and it appearing that Javier Vilarino is a disinterested person and that the employment of said attorney (general counsel) is in the best interest of this estate, it is hereby

ORDERED that the Chapter 7 trustee herein is authorized to employ Javier Vilarino as attorney (general counsel), with compensation to be paid in such amounts as may be allowed by the Court upon proper application and notice thereof.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this Tuesday, July 11, 2017 .



Mildred Caban Flores
United States Bankruptcy Judge

Information to identify the case:

Debtor

FIDDLER, GONZLEZ & RODRIGUEZ, P.S.C.

EIN 06-6243707

Name

United States Bankruptcy Court District of Puerto Rico

Date case filed for chapter 7 5/16/17

Case number: 17-03403 -MCF 7

Official Form 309C (For Corporations or Partnerships)**Notice of Chapter 7 Bankruptcy Case -- No Proof of Claim Deadline**

12/15

For the debtor listed above, a case has been filed under chapter 7 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtor or the debtor's property. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the debtor. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

Do not file this notice with any proof of claim or other filing in the case.

1. Debtor's full name	FIDDLER, GONZLEZ & RODRIGUEZ, P.S.C.	
2. All other names used in the last 8 years		
3. Address	254 MUOZ RIVERA AVE. ORIENTAL BANK BUILDING 6TH FLOOR SAN JUAN, PR 00918	
4. Debtor's attorney Name and address	MARIA MERCEDES FIGUEROA Y MORGAGE FIGUEROA Y MORGAGE LEGAL ADVISORS 3415 ALEJANDRINO AVE., APT. 703 GUAYNABO, PR 00969-4956	Contact phone (787)234-3981 Email figueroaymorgadelaw@yahoo.com
5. Bankruptcy trustee Name and address	NOREEN WISCOVITCH RENTAS PMB 136 400 CALAF STREET SAN JUAN, PR 00918	Contact phone 787-946-0132 Email courts@nwr-law.com
6. Bankruptcy clerk's office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at www.pacer.gov .	Jose V Toledo Fed Bldg & US Courthouse 300 Recinto Sur Street, Room 109 San Juan, PR 00901	Hours open 8:00 AM - 4:00 PM Contact phone (787) 977-6000 Date: 5/16/17
7. Meeting of creditors The debtor's representative must attend the meeting to be questioned under oath. Creditors may attend, but are not required to do so.	June 22, 2017 at 09:30 AM The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.	Location: OCHOA BUILDING, 500 TANCA STREET , FIRST FLOOR, SAN JUAN, PR 00901
8. Proof of claim Please do not file a proof of claim unless you receive a notice to do so.	No property appears to be available to pay creditors. Therefore, please do not file a proof of claim now. If it later appears that assets are available to pay creditors, the clerk will send you another notice telling you that you may file a proof of claim and stating the deadline.	
9. Creditors with a foreign address	If you are a creditor receiving a notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.	

Fill in this information to identify the case:

United States Bankruptcy Court for the:

DISTRICT OF PUERTO RICOCase number (if known): _____ Chapter 7☐ Check if this is an amended filing**Official Form 201****Voluntary Petition for Non-Individuals Filing for Bankruptcy****12/15**

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, Instructions for Bankruptcy Forms for Non-Individuals, is available.

1. Debtor's name FIDDLER, GONZÁLEZ & RODRÍGUEZ, P.S.C
2. All other names debtor used in the last 8 years
Include any assumed names, trade names and *doing business as* names
3. Debtor's federal Employer Identification Number (EIN) 6 6 - 0 2 4 3 7 0 7
4. Debtor's address

<p>Principal place of business</p> <p><u>254 MUÑOZ RIVERA AVE.</u> Number Street</p> <p><u>ORIENTAL BANK BUILDING</u></p> <p><u>6TH FLOOR</u></p> <p><u>SAN JUAN</u> <u>PR</u> <u>00918</u> City State ZIP Code</p> <p><u>SAN JUAN</u> County</p>	<p>Mailing address, if different from principal place of business</p> <p><u>P O BOX 363507</u> Number Street</p> <p>P.O. Box _____</p> <p><u>SAN JUAN</u> <u>PR</u> <u>00936-3507</u> City State ZIP Code</p> <p>Location of principal assets, if different from principal place of business</p> <p>Number Street _____</p> <p>City State ZIP Code _____</p>
---	--
5. Debtor's website (URL) _____
6. Type of debtor

☒ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))

☐ Partnership (excluding LLP)

☐ Other. Specify: _____

Case number (if known)

A. Check one:

- B. Check all that apply:**

- 5 4 1 1

Check one:

- ☐ Chapter 11. Check all that apply:

- Chapter 12

☒ No

District _____ When MM / DD / YYYY Case number _____

Debtor **FIDDLER, GONZÁLEZ & RODRÍGUEZ, P.S.C**

Case number (if known) _____

10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?

List all cases. If more than 1, attach a separate list.

☒ No☐ Yes.

Debtor _____ Relationship _____

District _____ When _____

Case number, if known _____ MM / DD / YYYY

Debtor _____ Relationship _____

District _____ When _____

Case number, if known _____ MM / DD / YYYY

11. Why is the case filed in this district?

Check all that apply:

☒ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.☐ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.**12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?**☒ No☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.**Why does the property need immediate attention?** (Check all that apply.)☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.

What is the hazard? _____

☐ It needs to be physically secured or protected from the weather.☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).☐ Other _____**Where is the property?**

Number _____ Street _____

City _____ State _____ ZIP Code _____

Is the property insured?☐ No☐ Yes. Insurance agency _____

Contact name _____

Phone _____

Statistical and administrative information**13. Debtor's estimation of available funds**

Check one:

☒ Funds will be available for distribution to unsecured creditors.☐ After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

Debtor **FIDDLER, GONZÁLEZ & RODRÍGUEZ, P.S.C**

Case number (if known) _____

- 14. Estimated number of creditors**
- | | | |
|---|--|--|
| <input type="checkbox"/> 1-49 | <input type="checkbox"/> 1,000-5,000 | <input type="checkbox"/> 25,001-50,000 |
| <input type="checkbox"/> 50-99 | <input type="checkbox"/> 5,001-10,000 | <input type="checkbox"/> 50,001-100,000 |
| <input type="checkbox"/> 100-199 | <input type="checkbox"/> 10,001-25,000 | <input type="checkbox"/> More than 100,000 |
| <input checked="" type="checkbox"/> 200-999 | | |
- 15. Estimated assets**
- | | | |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000 | <input checked="" type="checkbox"/> \$1,000,001-\$10 million | <input type="checkbox"/> \$500,000,001-\$1 billion |
| <input type="checkbox"/> \$50,001-\$100,000 | <input type="checkbox"/> \$10,000,001-\$50 million | <input type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000 | <input type="checkbox"/> \$50,000,001-\$100 million | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion |
- 16. Estimated liabilities**
- | | | |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000 | <input checked="" type="checkbox"/> \$1,000,001-\$10 million | <input type="checkbox"/> \$500,000,001-\$1 billion |
| <input type="checkbox"/> \$50,001-\$100,000 | <input type="checkbox"/> \$10,000,001-\$50 million | <input type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000 | <input type="checkbox"/> \$50,000,001-\$100 million | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion |

Request for Relief, Declaration, and Signatures

WARNING --Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

- 17. Declaration and signature of authorized representative of debtor**
- ☒ The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
 - ☒ I have been authorized to file this petition on behalf of the debtor.
 - ☒ I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 05/16/2017

MM / DD / YYYY

X /s/ KENNETH C. BURY

Signature of authorized representative of debtor

KENNETH C. BURY

Printed name

Title **GENERAL ADMINISTRATOR**

18. Signature of attorney

X /s/ MARIA MERCEDES FIGUEROA Y MORGADE

Signature of attorney for debtor

Date 05/16/2017

MM / DD / YYYY

MARIA MERCEDES FIGUEROA Y MORGADE

Printed name

MARIA MERCEDES FIGUEROA Y MORGADE

Firm name

3415 ALEJANDRINO AVE.

Number Street

APT. 703

GUAYNABO

City

PR

State

00969

ZIP Code

(787) 234-3981

Contact phone

figueroaymorgadelaw@yahoo.com

Email address

207108

Bar number

PR

State

rnegron@vilarinolaw.com

From: Javier Vilariño <jvilarino@vilarinolaw.com>
Sent: Thursday, December 6, 2018 4:24 PM
To: Roberto Negrón
Subject: FW: In re. Fiddler - 17-03403 (MCF)
Attachments: litigation hold letter.pdf; Subpoena Production of Documents.pdf; Subpoena_-_formb_2570_-_MICROSOFT.pdf

Importance: High

Javier Vilariño, Esq.

Vilariño&AssociatesLLC

PO Box 9022515
San Juan PR 00902-2515
Phone: 787-565-9894
jvilarino@vilarinolaw.com

Please consider the environment before printing this email.

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. If you have received this communication by error, please notify us immediately by e-mail, and delete the original message.

From: Javier Vilariño <jvilarino@vilarinolaw.com>
Sent: Tuesday, November 06, 2018 10:03 AM
To: 'v-angtor@microsoft.com' <v-angtor@microsoft.com>; 'morivera@microsoft.com' <morivera@microsoft.com>
Cc: Jeselle Marrero <jmarrero@vilarinolaw.com>
Subject: In re. Fiddler - 17-03403 (MCF)
Importance: High

Dear Mrs. Torres and Mrs. Rivera.

Our legal firm has been authorized by the U.S. Bankruptcy Court to assist and provide legal counsel to the Chapter 7 Trustee in the bankruptcy case of the law firm Fiddler, Gonzalez, Rodriguez P.S.C. (See Attached litigation hold letter and exhibits) To that effect, Microsoft Corporation ("Microsoft") has been identified as an entity who was involved with Debtor's electronic network communications systems and was also listed as a Creditor in the case of reference.

On March 8, 2018, we sent to Microsoft Corporation (CELA), an Important legal hold notice, to your legal department at the following postal mail:

Attn. Microsoft Corporation (CELA)
One Microsoft Way
Redmond, WA 98052-6399

On June 19, 2018, we sent an official subpoena to the following address:

Microsoft PR S.A.
City View Plaza I
Suite # 48 State Rd. 165
KM 1.2 Guaynabo PR 00968-8046

The subpoena was never responded and our attempts to communicate with Microsoft has been to no avail. We would like to resolve this matter without Court intervention. We need the information requested as part of our investigation of Debtor's financial affairs. Therefore, please confirm receipt of these documents attached. Your confirmation will serve for us to avoid incurring in legal fees to move the bankruptcy court for an expedited order to compel against Microsoft Corporation. If after review of the documentation, you still need more information, we are available to discuss, don't hesitate to contact me.

Best regards.

Javier Vilariño, Esq.

Vilariño & Associates LLC

PO Box 9022515
San Juan PR 00902-2515
Phone: 787-565-9894
jvilarino@vilarinolaw.com

Please consider the environment before printing this email.

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. If you have received this communication by error, please notify us immediately by e-mail, and delete the original message.

rnegron@vilarinolaw.com

From: Javier Vilariño <jvilarino@vilarinolaw.com>
Sent: Thursday, December 6, 2018 4:25 PM
To: Roberto Negrón
Subject: FW: Notice of Objections - Fiddler, Gonzalez & Rodriguez PSC Ch. 7 BK

Javier Vilariño, Esq.

Vilariño&AssociatesLLC

PO Box 9022515
San Juan PR 00902-2515
Phone: 787-565-9894
jvilarino@vilarinolaw.com

Please consider the environment before printing this email.

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. If you have received this communication by error, please notify us immediately by e-mail, and delete the original message.

From: Javier Vilariño <jvilarino@vilarinolaw.com>
Sent: Monday, November 19, 2018 6:28 PM
To: 'Drew Wilkinson (CELA)' <anwilkin@microsoft.com>
Subject: RE: Notice of Objections - Fiddler, Gonzalez & Rodriguez PSC Ch. 7 BK

Drew.

Thank you for your prompt response. The domain is fgrlaw.com. As discussed, please place the hold in the accounts and let us know if you need any more information in order to produce the admin passwords.

Regards.

Javier Vilariño, Esq.

Vilariño&AssociatesLLC

PO Box 9022515
San Juan PR 00902-2515
Phone: 787-565-9894
jvilarino@vilarinolaw.com

Please consider the environment before printing this email.

The information contained in this e-mail message is intended only for the personal and confidential use of the

recipient(s) named above. If you have received this communication by error, please notify us immediately by e-mail, and delete the original message.

From: Javier Vilariño <jvilarino@vilarinolaw.com>
Sent: Monday, November 19, 2018 5:48 PM
To: 'Drew Wilkinson (CELA)' <anwilkin@microsoft.com>
Subject: RE: Notice of Objections - Fiddler, Gonzalez & Rodriguez PSC Ch. 7 BK

Dear Mr. Wilkinson.

We are in receipt of the documents forwarded to our offices. I would like to discuss this matter with you regarding access to O365 accounts tagged to the bankruptcy debtor of reference. I just left a message in your voice mail, you can reach me at 787-565-9894.

Thank you.

Javier Vilariño, Esq.

Vilariño&AssociatesLLC

PO Box 9022515
San Juan PR 00902-2515
Phone: 787-565-9894
jvilarino@vilarinolaw.com

Please consider the environment before printing this email.

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. If you have received this communication by error, please notify us immediately by e-mail, and delete the original message.

From: Drew Wilkinson (CELA) <anwilkin@microsoft.com>
Sent: Monday, November 19, 2018 4:35 PM
To: jvilarino@vilarinolaw.com
Subject: Notice of Objections - Fiddler, Gonzalez & Rodriguez PSC Ch. 7 BK

Hello,

Please find Microsoft's objections to this matter attached; you should receive the signed originals via FedEx shortly.

Drew Wilkinson | Litigation Group





VIA FedEx and Email

November 19, 2018

Javier Vilarino
Vilarino & Associates LLC
PO Box 9022515
San Juan, PR 00902
(787) 565-9894
jvilarino@vilarinolaw.com

RE: *Subpoena in Fiddler, Gonzalez & Rodriguez PSC Ch. 7 BK; United States Bankruptcy Court for the District of Puerto Rico; Case No.: 17-03403 (MCF)*

Dear Mr. Vilarino,

Microsoft is in receipt of your subpoena referenced above requesting the production of data pertaining to the account(s) of: please provide account(s). Please be advised that Microsoft responds to formally served subpoenas served on Microsoft's registered agent in the requesting party's state. **Microsoft does not respond to faxed or mailed requests and objects to the subpoena for insufficient service of process.**

Your letter and attached materials do not identify an account against which any action can be taken. Therefore, we have not confirmed the existence of the O365 domain accounts listed in the request. However, if the accounts do exist, any associated data is owned and controlled by the customer. Enterprise data may include proprietary or other sensitive information, including information that is subject to certain privileges or confidentiality obligations. The customer is solely in control of the administrator account and is capable of retrieving information more quickly and efficiently, and as a result with less burden, than Microsoft. It is our policy to notify our enterprise customers, unless legally prohibited, of any requests for their data, and to request that the issuing party obtain the information directly from the customer. To ensure this subpoena is fulfilled consistent with any rights or privileges applicable to the data, please direct your subpoena for any O365 accounts to the customer. Microsoft therefore objects on the basis that the data is owned and controlled by the customer.

OBJECTION TO PRESERVATION

Microsoft hereby objects to any request that it preserve the domain account sought by your subpoena. To the extent the subpoena seeks domain-wide information, it is overbroad, unduly burdensome, and disproportionate to the needs of the case. *See Fed. R. Civ. P. 37(e) advisory committee note (explaining that the Federal Rules' proportionality principles apply to the scope of pre-production preservation); see also Lord Abbett Mun. Income Fund, Inc. v. Asami*, 2014 WL 5477639, at *3 (N.D. Cal. Oct. 29, 2014) ("the proportionality principle applies to the duty to preserve potential sources

of evidence”); *Capricorn Power Co. v. Siemens Westinghouse Power Corp.*, 220 F.R.D. 429 (W.D. Pa. 2004) (noting that the preservation of evidence may be “particularly burdensome” for nonparties because their interest in a given case is “miniscule,” whereas the burdens can be “expensive and voluminous”). Any request for preservation is objectionable, moreover, because the customer retains control of the administrator account and is able to preserve responsive information more quickly and efficiently, and as a result with less burden, than Microsoft.

[Subject to, and without waiver of, the foregoing objections, Microsoft will be willing to consider preserving a narrower and less burdensome set of information while you direct your request for production to the customer.]

OBJECTION TO PRODUCTION OF EMAIL CONTENT

Your Subpoena Request seeks the production of email content for some or all of the Target Account(s). We hereby object to each request for production of email content on the following ground:

We are concerned that the Electronic Communications Privacy Act (“ECPA”), 18 U.S.C. §2510 to §2711, may prohibit the disclosure of email content in electronic storage without the consent of the account holder. It appears that Microsoft’s MSN, MSN TV (formerly WebTV) and Hotmail Services (“MSN Services”) fall within either the definition of a “person or entity providing an electronic communication service to the public” or “a person or entity providing remote computing service to the public.” 18 U.S.C. §2702(a), (b). If either of these provisions apply to Microsoft’s MSN Services, it would appear that they also prohibit Microsoft from divulging email content in electronic storage because it does not appear that any of the exemptions in 18 U.S.C. §2702(b) are applicable in this case. Further, the exemptions under 18 U.S.C. §2702(b) do not authorize Microsoft to divulge such content in response to a civil subpoena or even a court order.

As you will see from your review of this very complicated privacy legislation, if our concern is correct that the ECPA prohibits the disclosure of email content in electronic storage by Microsoft’s MSN Services without the consent of the account holder, the unauthorized disclosure of such content could subject Microsoft and you to serious civil and criminal penalties. 18 U.S.C. §2707.

We are not aware of any controlling authority holding that services such as Microsoft’s MSN Services are permitted by the ECPA to disclose email content in electronic storage in response to a civil subpoena. To the contrary, courts have ruled that contents of communications may not be disclosed to civil litigants even when presented with a civil subpoena. *O’Grady v. Superior Court*, 139 Cal.App.4th 1423, 1448 (Cal.App. 2006); accord *The U.S. Internet Service Provider Association, Electronic Evidence Compliance—A Guide for Internet Service Providers*, 18 BERKELEY TECH. L. J. 945, 965 (2003) ([No Stored Communications Act provision] “permits disclosure pursuant to a civil discovery order unless the order is obtained by a government entity. ... [T]he federal prohibition against divulging email contents remains stark, and there is no obvious exception for a civil discovery order on behalf of a private party.”); see also *Federal Trade Comm’n v. Netscape Communications Corp.*, 196 F.R.D. 559, 561 (N.D. Cal. 2000) (“There is no reason for the court to believe that Congress could not have specifically included discovery subpoenas in the statute had it meant to.”); *In re Subpoena Duces Tecum to AOL, LLC*, 550 F.Supp.2d 606 (E.D.Va. 2008) (“Agreeing

with the reasoning in *O'Grady*, this Court holds that State Farm's subpoena may not be enforced consistent with the plain language of the Privacy Act because the exceptions enumerated in § 2702(b) do not include civil discovery subpoenas."); *J. T. Shannon Lumber Co., Inc. v. Gilco Lumber Inc.*, 2008 WL 4755370 (N.D.Miss. 2008) (holding there is no "exception to the [SCA] for civil discovery or allow for coercion of defendants to allow such disclosure."); *Viacom Intern. Inc. v. Youtube Inc.*, 253 F.R.D. 256 (S.D.N.Y. 2008) ("ECPA § 2702 contains no exception for disclosure of [the content of] communications pursuant to civil discovery requests.")

As you can understand, given the severity of the penalties under the ECPA, we cannot release email content in response to your Subpoena without firm assurance that the requirements of the ECPA are met. Therefore, until we are provided with the valid, written consent of the account holder(s), we must object.

Moreover, subpoenas that compel the production of all e-mail from the account, without any effort to limit the scope to only e-mail related to the subject matter of the litigation, or messages sent during some relevant time period or to or from certain persons, are unlawful and invalid on their face. *Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2004). Accordingly, if your subpoena requests the production of all e-mail content, Microsoft objects on the basis that the subpoena is invalid.

OBJECTION TO PRODUCTION OF MATERIAL SUBJECT TO EU LAW

Microsoft objects to the production of information sought by your subpoena to the extent it is subject to EU Regulation 2016/679, the General Data Protection Regulation ("GDPR"). Microsoft is currently determining whether the data sought by your subpoena is subject to the GDPR; the process for making this determination takes approximately two weeks. Subject to, and without waiver of this objection, Microsoft may produce information responsive to your subpoena that Microsoft determines is not subject to the GDPR and/or non-content information with the consent of the account holder.

AVAILABILITY OF EMAIL CONTENT

Please be advised that contrary to what appears to be a popular conception, Microsoft does not maintain comprehensive archives of email content sent from or received by any of its Outlook or O365 services. **Microsoft does not retain deleted mail or sent items not saved by the user.** All of the email content possessed by Microsoft with regard to any given user account consists only of those emails accessible to the account holder—i.e. unread emails in the account holder's "Inbox" or emails saved to the account by the account holder or by automated processes—e.g. some accounts can be set to automatically save copies of sent items.

Given that the email content in Microsoft's possession with regard to the Target Accounts is readily accessible to the account holder(s), we believe that it is more appropriate and cost effective for you to seek discovery of the email content you seek directly from the account holder.

As Microsoft is not a party to this matter and has no interest in its outcome, it is neither Microsoft's intent, nor its desire, to hinder or delay production of the documents requested by you. Microsoft has implemented the procedural requirements noted above in order to conform with what it believes to be proper under applicable local, state, and federal laws and public policies.

If you wish to discuss this matter further, or if you have any questions or concerns, please feel free to contact me at any time at 425-703-9892.

Sincerely yours,

MICROSOFT CORPORATION

A handwritten signature in blue ink, appearing to read "Drew Wilkinson", written over the printed name.

Drew Wilkinson
Custodian of Records

rnegron@vilarinolaw.com

From: Javier Vilariño <jvilarino@vilarinolaw.com>
Sent: Friday, January 18, 2019 5:56 PM
To: brienj@microsoft.com; Drew Wilkinson (CELA)
Cc: Roberto Negron
Subject: RE: Notice of Objections - Fiddler, Gonzalez & Rodriguez PSC Ch. 7 BK

Importance: High

Dear Mr. Jacobsen:

We have tried every possible extrajudicial way to obtain the Office 365 administrative passwords owned by the bankruptcy estate of Fiddler, which my client, the Chapter 7 Trustee Noreen Wiscovitch, represents. Please be advised that if we don't receive the passwords on or before Tuesday, January 22, 2018 at 1:00 pm EST, we will be moving the Court for injunctive relief against Microsoft. The Trustee reserves all rights regarding this matter.

With nothing further, I remain.

Javier Vilariño, Esq.

Vilariño & Associates LLC

PO Box 9022515
San Juan PR 00902-2515
Phone: 787-565-9894
jvilarino@vilarinolaw.com

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From: Javier Vilariño <jvilarino@vilarinolaw.com>
Sent: Monday, November 19, 2018 6:28 PM
To: 'Drew Wilkinson (CELA)' <anwilkin@microsoft.com>
Subject: RE: Notice of Objections - Fiddler, Gonzalez & Rodriguez PSC Ch. 7 BK

Drew.

Thank you for your prompt response. The domain is fgrlaw.com. As discussed, please place the hold in the accounts and let us know if you need any more information in order to produce the admin passwords.

Regards.

Javier Vilariño, Esq.

Vilariño & Associates LLC

PO Box 9022515
San Juan PR 00902-2515
Phone: 787-565-9894
jvilarino@vilarinolaw.com

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From: Javier Vilariño <jvilarino@vilarinolaw.com>
Sent: Monday, November 19, 2018 5:48 PM
To: 'Drew Wilkinson (CELA)' <anwilkin@microsoft.com>
Subject: RE: Notice of Objections - Fiddler, Gonzalez & Rodriguez PSC Ch. 7 BK

Dear Mr. Wilkinson.

We are in receipt of the documents forwarded to our offices. I would like to discuss this matter with you regarding access to O365 accounts tagged to the bankruptcy debtor of reference. I just left a message in your voice mail, you can reach me at 787-565-9894.

Thank you.

Javier Vilariño, Esq.

Vilariño & Associates LLC

PO Box 9022515
San Juan PR 00902-2515
Phone: 787-565-9894
jvilarino@vilarinolaw.com

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From: Drew Wilkinson (CELA) <anwilkin@microsoft.com>
Sent: Monday, November 19, 2018 4:35 PM
To: jvilarino@vilarinolaw.com
Subject: Notice of Objections - Fiddler, Gonzalez & Rodriguez PSC Ch. 7 BK

Hello,

Please find Microsoft's objections to this matter attached; you should receive the signed originals via FedEx shortly.

Drew Wilkinson | Litigation Group

